

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86251550
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The application presently stands refused under Trademark Act Section 2(d) in light of the existing registrations for GENERATIONS MANAGEMENT and GENERATIONS REALTY (both of which are owned by the same entity applied to, respectively, "real estate leasing and property management" and "real estate brokerage") and the existing registration for GENERATION HOMES (and design) (applied to real estate development") and further, disclaimer has been requested of the phrase "SENIOR LIVING." As set forth in this request for reconsideration, Applicant respectfully traverses the refusal under Section 2(d) and requests that it be withdrawn. As an initial matter, Applicant has amended its claim of goods and services to remove international class 37 to "Real estate development." As noted above, the mark for GENERATION HOMES (and design) above is only registered in class 37, and is not registered for leasing of apartments or management of apartments, which are now the only remaining goods and services of the present application. Accordingly, Applicant respectfully submits that no likelihood of confusion exists between the present application and GENERATION HOMES (and design). In its prior response, Applicant noted that there are numerous registrations within Class 36 that include GENERATION(S) together with other, often disclaimed, words as applied to property leasing and management services. This evidences that the consuming public is exposed to thirdparty use of similar marks for similar services and, thus, is relevant to show that the cited marks are relatively weak and entitled to only a narrow scope of protection and third party registrations can be considered for that purpose. As supporting evidence, Applicant included registrations for marks that include GENERATION(S), including NEW GENERATION REALTY and NEXT GENERATION FLAT FEE BROKER, in addition to the cited registrations. The present office action dismisses the previous argument and submitted evidence, stating that "Evidence of weakness or dilution consisting solely of third-party registrations... is generally entitled to little weight in determining the strength of a mark, because such registrations do not establish that the registered marks identified therein are in actual use in the marketplace." In response, Applicant submits new evidence demonstrating that the prior submitted registrations are actually in use in the marketplace. A declaration is submitted with the evidence in support of the evidence, declaring that the evidence was accurate as of June 5, 2015. The submitted web pages demonstrate that the marks NEW GENERATION REALTY and NEXT GENERATION FLAT FEE BROKER (and design) are currently in use in commerce. The present office action further alleges that the words NEW and NEXT in the above referenced marks help those marks to "create a different commercial impression." However, Applicant notes that both the words NEW and NEXT are commonly used in within the class and therefore should not provide any</p>	

substantial weight in the registration of those marks. See, US Reg. 3314657 for THE NEXT GREAT NEIGHBORHOOD for Real estate services, namely, real estate listing, real estate brokerage, real estate leasing, real estate sales management and management of commercial and residential property, US Reg. 3141792 for NEXT REALTY MIDWEST for real estate brokerage services; real estate agency services in the nature of assisting tenants with identifying and leasing properties, US Reg. 3141788 for NEXT REALTY MID-ATLANTIC for real estate brokerage services; real estate agency services in the nature of assisting tenants with identifying and leasing properties, US Reg. 4482162 for ALWAYS NEW for Leasing and rental of shopping mall space, office space, and entertainment center space, and US Reg. 4105565 for NEW GROUND REALTY SERVICES for Arranging of leases and rental agreements for real estate; leasing of real estate. In light of Applicant's amendment of the goods and services, and the newly submitted evidence and arguments herein, Applicant respectfully submits that the focus solely on the word GENERATIONS impermissibly analyzes the mark in a piecemeal fashion. Viewed as a whole, in light of the evidence that the consuming public is exposed to third-party use of similar marks for similar services and, thus, the cited marks are relatively weak and entitled to only a narrow scope of protection, it is respectfully submitted that the mark that is the subject of the current application does not create a likelihood of confusion with respect to any of the marks of the cited registrations (or the others made of record), all of which coexist on the register and in the marketplace without confusion. For the reasons set forth above, in light of Applicant's agreement to entry of the requested disclaimer, Applicant respectfully submits that the application is in order for allowance and requests that the refusal under Section 2(d) be withdrawn

## EVIDENCE SECTION

### EVIDENCE FILE NAME(S)

JPG FILE(S)	<a href="\\TICRS\EXPORT16\IMAGEOUT 16\862\515\86251550\xml7\RFR0002.JPG">\\TICRS\EXPORT16\IMAGEOUT 16\862\515\86251550\xml7\RFR0002.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\862\515\86251550\xml7\RFR0003.JPG">\\TICRS\EXPORT16\IMAGEOUT16\862\515\86251550\xml7\RFR0003.JPG</a>
ORIGINAL PDF FILE	<a href="evi_2417218658-20150605172317784805_._Declaration.pdf">evi_2417218658-20150605172317784805_._Declaration.pdf</a>
CONVERTED PDF FILE(S) (1 page)	<a href="\\TICRS\EXPORT16\IMAGEOUT16\862\515\86251550\xml7\RFR0004.JPG">\\TICRS\EXPORT16\IMAGEOUT16\862\515\86251550\xml7\RFR0004.JPG</a>

## GOODS AND/OR SERVICES SECTION (036)(no change)

## GOODS AND/OR SERVICES SECTION (037)(class deleted)

## SIGNATURE SECTION

RESPONSE SIGNATURE	/TEE/
SIGNATORY'S NAME	Timothy E. Eagle
SIGNATORY'S POSITION	attorney of record, admitted in Michigan
SIGNATORY'S PHONE NUMBER	616-336-6000
DATE SIGNED	06/05/2015
AUTHORIZED SIGNATORY	YES

<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Fri Jun 05 17:28:23 EDT 2015
<b>TEAS STAMP</b>	USPTO/RFR-24.172.186.58-2 0150605172823561110-86251 550-530bde26f5a6663a7ff2 5cdeec5f8104a6f754c69285f 1f1544468abb2bb99aa4-N/A- N/A-20150605172317784805

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86251550** has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

The application presently stands refused under Trademark Act Section 2(d) in light of the existing registrations for GENERATIONS MANAGEMENT and GENERATIONS REALTY (both of which are owned by the same entity applied to, respectively, "real estate leasing and property management" and "real estate brokerage") and the existing registration for GENERATION HOMES (and design) (applied to real estate development") and further, disclaimer has been requested of the phrase "SENIOR LIVING." As set forth in this request for reconsideration, Applicant respectfully traverses the refusal under Section 2(d) and requests that it be withdrawn. As an initial matter, Applicant has amended its claim of goods and services to remove international class 37 to "Real estate development." As noted above, the mark for GENERATION HOMES (and design) above is only registered in class 37, and is not registered for leasing of apartments or management of apartments, which are now the only remaining goods and services of the present application. Accordingly, Applicant respectfully submits that no likelihood of confusion exists between the present application and GENERATION HOMES (and design). In its prior response, Applicant noted that there are numerous registrations within Class 36 that include GENERATION(S) together with other, often disclaimed, words as applied to property leasing and management services. This evidences that the consuming public is exposed to thirdparty use of similar marks for similar services and, thus, is relevant to show that the cited marks are relatively weak and entitled to only a narrow scope of protection and third party registrations can be considered for that purpose. As supporting evidence, Applicant included registrations for marks that include GENERATION(S), including NEW GENERATION REALTY and NEXT GENERATION FLAT FEE BROKER, in addition to the cited registrations. The present office action dismisses the previous argument and submitted evidence, stating that "Evidence of weakness or dilution consisting solely of third-party registrationsÂ... is generally entitled little weight in determining the strength of a mark, because such registrations do not establish that the

registered marks identified therein are in actual use in the marketplace." In response, Applicant submits new evidence demonstrating that the prior submitted registrations are actually in use in the marketplace. A declaration is submitted with the evidence in support of the evidence, declaring that the evidence was accurate as of June 5, 2015. The submitted web pages demonstrate that the marks NEW GENERATION REALTY and NEXT GENERATION FLAT FEE BROKER (and design) are currently in use in commerce. The present office action further alleges that the words NEW and NEXT in the above referenced marks help those marks to "create a different commercial impression." However, Applicant notes that both the words NEW and NEXT are commonly used in within the class and therefore should not provide any substantial weight in the registration of those marks. See, US Reg. 3314657 for THE NEXT GREAT NEIGHBORHOOD for Real estate services, namely, real estate listing, real estate brokerage, real estate leasing, real estate sales management and management of commercial and residential property, US Reg. 3141792 for NEXT REALTY MIDWEST for real estate brokerage services; real estate agency services in the nature of assisting tenants with identifying and leasing properties, US Reg. 3141788 for NEXT REALTY MID-ATLANTIC for real estate brokerage services; real estate agency services in the nature of assisting tenants with identifying and leasing properties, US Reg. 4482162 for ALWAYS NEW for Leasing and rental of shopping mall space, office space, and entertainment center space, and US Reg. 4105565 for NEW GROUND REALTY SERVICES for Arranging of leases and rental agreements for real estate; leasing of real estate. In light of Applicant's amendment of the goods and services, and the newly submitted evidence and arguments herein, Applicant respectfully submits that the focus solely on the word GENERATIONS impermissibly analyzes the mark in a piecemeal fashion. Viewed as a whole, in light of the evidence that the consuming public is exposed to third-party use of similar marks for similar services and, thus, the cited marks are relatively weak and entitled to only a narrow scope of protection, it is respectfully submitted that the mark that is the subject of the current application does not create a likelihood of confusion with respect to any of the marks of the cited registrations (or the others made of record), all of which coexist on the register and in the marketplace without confusion. For the reasons set forth above, in light of Applicant's agreement to entry of the requested disclaimer, Applicant respectfully submits that the application is in order for allowance and requests that the refusal under Section 2(d) be withdrawn

## **EVIDENCE**

### **JPG file(s):**

[Evidence-1](#)

[Evidence-2](#)

### **Original PDF file:**

[evi\\_2417218658-20150605172317784805\\_. Declaration.pdf](#)

### **Converted PDF file(s) ( 1 page)**

[Evidence-1](#)

## **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant hereby deletes the following class of goods/services from the application.**

Class 037 for Real estate development

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /TEE/ Date: 06/05/2015

Signatory's Name: Timothy E. Eagle

Signatory's Position: attorney of record, admitted in Michigan

Signatory's Phone Number: 616-336-6000

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86251550

Internet Transmission Date: Fri Jun 05 17:28:23 EDT 2015

TEAS Stamp: USPTO/RFR-24.172.186.58-2015060517282356

1110-86251550-530bde26f5a6663a7ff25cdee

c5f8104a6f754c69285f1f1544468abb2bb99aa4

-N/A-N/A-20150605172317784805



# New Generation Realty



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weather.com

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June 5, 2015

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FLAT FEE BROKER

## Online Polls

As a buyer, you enter a home and there are two important rooms that need new carpet. Would you rather have new carpet in the home before you see it OR have the seller give you an allowance to pick out the carpet upon the purchase of the home?

18.8% New Carpet

81.3% Allowance for New Carpet

Other Polls ▶

## Mortgage Rates

30 Year Fixed 20% Down	3.88%
5/1 Arm	2.88%
FHA 30 year fixed	3.75%
FHA 5 Year ARM	3.38%

Inquire ▶

## Market Analysis Tool



Welcome to  
**next generation realty**

Iowa's largest flat-fee real estate company,  
proudly serving Central Iowa since 1994.

Our customers have saved by  
listing their homes with us:

**\$36,442,489**

This calculation is based on a 7% commission, minus our fee.

**Guarding your real estate equity™**

Welcome to Next Generation Realty, serving Central Iowa from our Des Moines, Iowa offices. Whether you are looking to buy your next home or looking to sell, Next Generation Realty can help. We work for both the seller and the buyer with our low-cost program that will help save you money.

We believe that all real estate can be sold, and that by being our partner, it can be sold for just one low flat-fee. To learn more about the basic principles upon which Next Generation Realty was founded, [click here](#).



**Showcase Home**

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Select location and style, then press go!

--Choose Location-- ▼

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## NextMap Search



Introducing the next generation in home property search, [NextMap](#).

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### **DECLARATION**

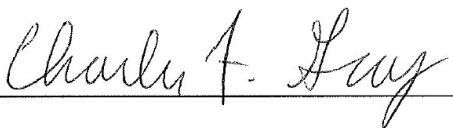
I, Charlie Gray, declare as follows:

1. On June 5, 2015, I accessed the New Generation Realty web page at <http://ngrrealty.com/> and took a screen shot of the web page. The screen shot shows the registered mark, NEW GENERATION REALTY, in use related to real estate brokerage as of June 5, 2015.

2. On June 5, 2015, I accessed the Next Generation Realty web page at <http://dsm.nextgenerationrealty.com/> and took a screen shot of the web page. The screen shot shows the registered mark, NEXT GENERATION FLAT FEE BROKER (and design), in use as for real estate brokerage services of June 5, 2015.

3. Both screen shots are true and accurate representations and are submitted as evidence with the present Request for Reconsideration.

By:

A handwritten signature in cursive script, reading "Charlie F. Gray", is written over a horizontal line.

Charlie Gray